

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BOARD FOR LICENSING OCNTRACTORS

BOARD MEETING
MAY 20, 2008

HELD AT
HOLIDAY INN SELECT DOWNTOWN
160 UNION AVENUE
MEMPHIS, TENNESSEE

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APPEARANCES

BOARD MEMBERS:

MR. KEITH WHITTINGTON
JOHNSON CITY, TENNESSEE

MR. GLENN STILL
DYERSBURG, TENNESSEE

MR. FRANK NEAL
NASHVILLE, TENNESSEE

MR. LARRY PARKS - CHAIRMAN
CHATTANOOGA, TENNESSEE

MR. CLIFF HUNT
MEMPHIS, TENNESSEE

MR. MARVIN SANDRELL
COLUMBIA, TENNESSEE

MR. ERNEST OWENS
MEMPHIS, TENNESSEE

MS. CINDI DeBUSK
FRANKLIN, TENNESSEE

ATTORNEYS:

MS. BETH TARTER
MS. NICOLE CANTER

STAFF MEMBERS:

MS. CAROLYN LAZENBY
MS. TELISE ROBERTS
MS. KATHY HOLLIMAN

COURT REPORTER:

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1 MR. PARKS: All right. I will
2 call the meeting to order, Board of Licensing
3 Contractors May meeting, beginning with the
4 roll call to my left.

5 That would be you, Cindi.

6 MS. DEBUSK: Cindi DeBusk,
7 Knoxville.

8 MR. OWENS: Ernest Owens,
9 Memphis, Tennessee.

10 MR. SANDRELL: Marvin Sandrell
11 Columbia, Tennessee.

12 MR. HUNT: Cliff Hunt, Memphis.

13 MR. PARKS: Larry Parks,
14 Chattanooga.

15 MR. NEAL: Frank Neal, Nashville.

16 MR. STILL: Glenn Still,
17 Dyersburg.

18 MR. WHITTINGTON: Keith
19 Whittington, Johnson City.

20 MR. PARKS: Thank you. The agenda
21 is in the left pocket of our notebook. And
22 do we have any additions, deletions, or
23 changes to the agenda?

24 (NO RESPONSE)

1 MR. PARKS: So may we have a
2 motion to accept the agenda as presented?

3 MR. NEAL: So moved.

4 MR. SANDRELL: Second.

5 MR. OWENS: Discussion?

6 (NO RESPONSE)

7 MR. PARKS: All in favor say I.

8 (UNANIMOUS VOTE)

9 MR. PARKS: Ratification of
10 hardships since our last meeting is behind
11 Tab 1. The list is there, and I think it's
12 on two pages.

13 I will accept a motion for
14 approval of these.

15 MR. STILL: So moved.

16 MR. WHITTINGTON: Second.

17 MR. PARKS: Any question or
18 discussion?

19 (NO RESPONSE)

20 MR. PARKS: All in favor say I.

21 (UNANIMOUS VOTE)

22 MR. PARKS: Thank you. Behind Tab
23 2 is the transcript of our -- obviously, I
24 see one mistake. It's dated next week. May

1 25, '08. So, obviously, that's from our
2 March.

3 Was it the 25th that we met?

4 MS. DEBUSK: I believe so.

5 MR. PARKS: But that is,
6 hopefully, an otherwise accurate transcript
7 of our meeting. I have not reviewed it, but
8 we need an approval.

9 I need a motion to accept it as
10 submitted, with that date correction noted.

11 MR. NEAL: So moved.

12 MR. OWENS: Second.

13 MR. PARKS: Is there discussion or
14 questions?

15 (NO RESPONSE)

16 MR. PARKS: All in favor say I.

17 (UNANIMOUS VOTE)

18 MR. PARKS: Thank you.

19 Next, behind Tab 3, is the
20 interviewed and waived applicant list. As is
21 typical, we normally have some exceptions and
22 discussion about certain interviews we've
23 done today, so who has some?

24 MR. HUNT: Do you want to start

1 with a motion?

2 MR. PARKS: Okay. I don't -- I
3 think we vary it, so that's fine.

4 If somebody wants to make a motion
5 for acceptance of all these subject to
6 discussions, we will.

7 MR. HUNT: I'll make a motion that
8 we approve all the interviews, for the
9 interviews of today and the waived interviews
10 subject to discussions.

11 MR. NEAL: Subject to discussion,
12 the ones we've got?

13 MR. HUNT: Yeah.

14 MR. NEAL: Second.

15 MR. PARKS: All right.

16 Discussion?

17 MR. NEAL: I've got one,
18 Mr. Chairman.

19 This is an application for a
20 license where a complaint was filed against
21 an existing license holder. The existing
22 license holder is a father. The application
23 for the new license are son's.

24 The complaint that was filed was

1 in connection with a complaint on a
2 residential home built by the son using a
3 permit number -- or to a pull a permit with
4 the license number of the father.

5 As I say, both of the individuals
6 appeared. A citation had been issued against
7 the father's license, and he has since paid
8 that citation.

9 I might mention at this time, that
10 the father has been licensed since the late
11 '80s with no complaints registered against
12 him.

13 The thought process was that the
14 son could build under his father's license,
15 since he worked for him, and pull permits.

16 All that said, the question rises
17 as to whether or not to grant a license for
18 the new applicant, since there really are no
19 charges against him. However, they now
20 understand that that really was not the
21 proper method that they should have been
22 operating, and that is the reason for the
23 asking of the new license.

24 After interviewing both of these

1 people, in my opinion, they are certainly not
2 dishonest people, and they seem to be trying
3 to do the right thing.

4 To the extent that the complaint
5 that has been filed by the purchaser/owner of
6 the house in question with defects involved,
7 they have agreed to repurchase the home from
8 the claimant at the full price that they sold
9 it to her for.

10 That person is currently trying to
11 gain additional funds over and above the
12 amount that she paid for the house. And as I
13 understand it, she has threatened to sue in
14 order to retain that.

15 That's, generally, the background
16 on the information. So my recommendation was
17 that this firm who's asked for the license.
18 Who has some four spec homes under
19 construction now but no work as been
20 performed on them since mid December of '07,
21 awaiting some outcome of the decision about
22 an application for license, that they be
23 given a consent order for \$1,000 fine,
24 basically just because, and that their

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1 license be issued as requested on June 15,
2 '08.

3 Anyone have any questions or
4 comments?

5 MR. STILL: Was that tabled as a
6 motion?

7 MR. NEAL: Yes, sir.

8 MR. STILL: I'll second that.

9 MR. PARKS: That's an amendment to
10 the original motion.

11 MR. STILL: That's right.

12 MR. PARKS: Technically, I think.
13 Are there other files to be
14 discussed?

15 MR. NEAL: Well, what are we going
16 to do with this one?

17 MR. PARKS: Well, all right.
18 Sorry.

19 We need -- I have a vote on this
20 amendment for the motion.

21 MR. NEAL: But how do you amend?

22 MR. PARKS: You amended it. I
23 mean, he -- I'm taking it that Cliff made a
24 motion to accept them as presented, so Frank

1 is modifying.

2 MR. NEAL: Oh, okay. I see.

3 MR. PARKS: He's amending that
4 initial motion.

5 MR. NEAL: Okay.

6 MR. PARKS: So may I have a vote
7 on the amendment regarding this one licensee
8 Number 61025?

9 All in favor say I, please.

10 (UNANIMOUS VOTE)

11 MR. PARKS: All right. Is there
12 any other files, applicants, today to be
13 discussed?

14 MR. NEAL: Will you and Carolyn
15 get together and send him a consent order?

16 MS. TARTER: Right. I was going
17 to clarify.

18 Do you want to do a consent order
19 against the son, correct, for working off of
20 the father's license?

21 MR. NEAL: Right.

22 MS. TARTER: Okay.

23 MR. PARKS: All right. Now, all
24 in favor of the original motion as amended

1 now say I.

2 (UNANIMOUS VOTE)

3 MR. PARKS: Thank you.

4 Next is behind Tab 4, and that is
5 the revisions, increases, add classes, mode
6 changes, etcetera.

7 MR. HUNT: I make a motion we
8 accept.

9 MR. PARKS: Thank you. And is
10 there a second?

11 MR. OWENS: Second.

12 MR. PARKS: Any discussion?

13 (NO RESPONSE)

14 MR. PARKS: All in favor say I.

15 (UNANIMOUS VOTE)

16 MR. PARKS: Thank you. Behind Tab
17 5 are the LLE applicants approved -- or, I
18 guess, submitted since the last meeting
19 needing approval.

20 Do we have a motion for the
21 acceptance of those?

22 MR. NEAL: So moved.

23 MR. PARKS: Is there a second?

24 MR. STILL: Second.

1 MR. PARKS: Is there a
2 discussion?

3 (NO RESPONSE)

4 MR. PARKS: All in favor say I.

5 (UNANIMOUS VOTE)

6 MR. PARKS: Thank you.

7 MR. HUNT: That was quick. I'm
8 assuming somebody looked through them all?

9 MS. LAZENBY: Cindi did.

10 MR. PARKS: Thank you. I have one
11 more that, I guess, it could come in the way
12 of a revision. Or it's not really a
13 revision; it's a question. But I want it
14 brought to the Board to discuss and it deals
15 with financial guarantees.

16 There is a parent company and a
17 subsidiary company that both have unlimited
18 licenses, I believe, that it states. Maybe,
19 it's -- maybe, the second one is applying.

20 But they have -- on the one that
21 has been licensed since some time last year,
22 they have limited their guarantee to \$1
23 million.

24 Have we accepted guarantees with

1 limits -- with a limit added to it? Do we
2 have a problem with that?

3 I don't think there's an issue
4 with the financials.

5 MR. NEAL: In the past, we haven't
6 allowed amendments to our wording on our
7 guarantees.

8 MR. PARKS: Okay. In this case,
9 the particular company is worth \$1.9
10 billion. I beg your pardon. Worth \$900
11 million. I guess I can see why they want to
12 limit it.

13 MR. NEAL: They want an unlimited
14 license?

15 MR. PARKS: They want an -- they
16 have an unlimited license, and I don't quite
17 follow the time line of the chain of events.

18 They signed a guarantee agreement
19 dated June 11, '07, which is, apparently,
20 when they submitted their initial
21 application.

22 MR. NEAL: And it was not
23 restricted?

24 MR. PARKS: And it was not

1 restricted. And so then, on December 18,
2 '07, they sent another one in signed by a
3 different -- well, the initial one looks like
4 it was signed -- it must have been accepted
5 in error. It looks as though it was
6 signed -- no, I follow it now.

7 The original one was in the file
8 at the time of either interview -- and they
9 were interviewed by you, Frank -- was not on
10 the parent company. It was the applicant
11 guaranteeing themselves. And the folder does
12 say, guarantee agreement from parent needed.

13 So the parent company has then
14 sent in one dated December of '07. And
15 that's the one that has, "This guarantee is
16 limited to \$1 million" written on it.

17 And then in the file, and I don't
18 understand that at all, is another one with
19 yet a different company name. They all have
20 the first name Worthington.

21 It's unlimited. It's dated the
22 day before the one with the \$1 million limit,
23 but, yet, it's got a different company name.
24 So, maybe, it's a different subsidiary. I

1 don't know.

2 But does this ring a bell with any
3 of the staff?

4 MS. LAZENBY: No.

5 MR. NEAL: It does with me.

6 MR. PARKS: Okay.

7 MR. NEAL: I told the guy we
8 wouldn't do anything until we got a guarantee
9 of the parent. And I guess they just wanted
10 to limit when they sent it back in.

11 MR. PARKS: So this, apparently --
12 this one, apparently, is not the parent. And
13 this one is.

14 MR. NEAL: Right.

15 MR. PARKS: Then we can reject
16 that.

17 And then if they applied for a
18 second license, apparently, because this
19 folder isn't signed off on. It has a
20 guarantee in it limited to \$1 million.

21 So, Cathy, you and I will work
22 this out, or you and Frank, or you and Frank
23 and I will or something. We'll have to
24 reject it or see what we can work out as far

1 as the guarantee goes.

2 MR. STILL: So they have not been
3 licensed, the companies?

4 MR. PARKS: They've been
5 licensed. They were licensed in November.
6 Well, they were approved needing a guarantee
7 from the parents.

8 MR. STILL: Yeah, they were
9 approved with exception.

10 MR. PARKS: Maybe, it never has
11 been released. I honestly don't know.

12 (Addressing Ms. Lazenby) Do you
13 know?

14 MS. LAZENBY: I don't know
15 offhand.

16 MR. PARKS: Okay.

17 MR. STILL: They were approved
18 subject to that guarantee?

19 MR. PARKS: This is how that
20 reads, yes.

21 MR. STILL: So they should not be
22 licensed.

23 MR. PARKS: They should not have
24 been released. But we'll get into it and

1 see.

2 All right. Nobody's here for our
3 2:00 session.

4 Suppose we do the legal report,
5 Beth?

6 MS. TARTER: Okay. I think I've
7 got enough copies made.

8 MR. PARKS: All right. Who's
9 going to make a motion on the residential,
10 which go through Number 46 on Page 13?

11 Or is there discussion or
12 question, or have you resolved it, and is
13 somebody ready to make a motion to accepted
14 them as noted?

15 MR. STILL: I'll make that motion
16 to accept to recommendations of the
17 Residential Review Committee.

18 MR. WHITTINGTON: Second.

19 MR. PARKS: We have a motion and
20 second to accept items 1 through 46 on the
21 May meeting legal report.

22 Is there a question or
23 discussions?

24 MR. HUNT: Beth, did we not make a

1 few changes on the recommendations?

2 MS. TARTER: Yes, we did. I just
3 assumed that was subject to you guys changes.

4 MR. HUNT: Well, do you want --

5 MR. STILL: I will amend the
6 motion then to reflect those changes that we
7 discussed in our meeting.

8 MR. WHITTINGTON: And I'll amend
9 my second.

10 MR. PARKS: Okay. Do we need any
11 discussion on those changes?

12 MR. HUNT: I thought, maybe, Beth
13 could just go through them and say on Number
14 Such and Such --

15 MS. TARTER: Do you want me to go
16 through them?

17 MR. HUNT: -- the recommendation
18 is now this.

19 MS. TARTER: There is an amendment
20 on the recommendation for Number 8. We were
21 going to check into the nature of past
22 complaints.

23 Although, there wasn't any
24 evidence on this case, we were concerned

1 about the nature of how many complaints there
2 had been in the past to see if there was some
3 issues. We might send a letter of warning to
4 them that they have too many complaints, and
5 they need to be aware of our concern about
6 that.

7 And I think we have Number 22, the
8 second case number listed, the 951, that
9 isn't going to be closed. We're going to do
10 some further investigation on it to see if we
11 can get a little bit more evidence to back up
12 what the complaint was being investigated
13 for.

14 And Number 29, the previous civil
15 penalty isn't going to be waived entirely.
16 It's just going to be reduced to \$250 for
17 contracting in another name.

18 And Number 38, there's going to be
19 a letter of warning. The recommendation was
20 a letter of warning. This is an individual
21 who said that they actually have serious
22 medical conditions, and they're not working
23 anymore. We were also going to send a
24 consent order for voluntary relinquishment of

1 the license.

2 I think that's all the notes I
3 have on mine as far as changes.

4 MR. PARKS: If there are no
5 further questions, may I have a motion to
6 accept 1 through 46 as noted?

7 MR. STILL: We have one.

8 MR. PARKS: Oh, I'm sorry.
9 All in favor, say I.

10 (UNANIMOUS VOTE)

11 MR. PARKS: Thank you.

12 Frank and I were the commercial
13 committee.

14 I had one question on Number 4,
15 and that was to confirm that that particular
16 respondent was not awarded the job. If he
17 was, then there should be some other action
18 in addition, beyond a letter of warning.

19 Frank, did you, on your 4, have
20 any?

21 MR. NEAL: I just had a question
22 on Number 7. There was a \$14,000 contract in
23 a HIC county. And the recommendation is
24 closed with a letter of warning, obtain a

1 license before contracting.

2 Does a guy under \$25,000, does he
3 need the license? Or was he planning on
4 bidding over the \$25,000 jobs?

5 MR. PARKS: Well, he was home
6 improvement, if that's what kind of county it
7 was in. They wouldn't have any commercial.
8 I mean, yeah, this is commercial.

9 MR. NEAL: Oh, okay.

10 MS. TARTER: I think it's one of
11 those that we got a complaint saying
12 unlicensed contracting. And then after an
13 investigation and after a response, we found
14 that it was actually below the amount that
15 would require a contractor's license.

16 But it would, conceivably require
17 a home improvement license. We just don't
18 have a copy. There's no bid or anything like
19 that. He was saying it was some sort of bid
20 on a perspective job.

21 So that's all we were going to do,
22 a letter of warning saying that he needed to
23 get a license, the proper license.

24 MR. NEAL: Yeah, either a home

1 improvement or if he's going to be an over
2 \$25,000, get it.

3 MS. TARTER: Right.

4 MR. NEAL: Right.

5 MS. TARTER: It was one of those
6 very informal. There wasn't any evidence
7 about what kind of the nature of the project
8 was or anything like that.

9 MR. NEAL: Okay.

10 MR. PARKS: Would you like to make
11 a motion?

12 MR. NEAL: I make a motion.

13 THE COURT REPORTER: I'm going to
14 ask you to, please, speak up for me.

15 MR. PARKS: I'm sorry.

16 THE COURT REPORTER: Thank you.

17 MS. TARTER: Larry, we need to
18 pull that file real fast to confirm that.

19 MR. PARKS: Oh, okay, if you want
20 to.

21 MR. NEAL: They want to what?

22 MR. PARKS: She's going to pull
23 the file on that Number 4.

24 MR. NEAL: Oh, okay.

1 MR. PARKS: And then we'll get it
2 on the record, if we're going to change what
3 we do.

4 MS. TARTER: Mr. Chairman.

5 MR. PARKS: Yes?

6 MS. TARTER: We checked on that
7 on. It was a disqualified bid.

8 MR. PARKS: Okay. All right. Did
9 you finish your motion or get sidetracked?

10 MR. NEAL: No, I was sidetracked.

11 I would make a motion that the
12 commercial complaints as stated in the report
13 be approved.

14 MR. PARKS: Is there a second?

15 MR. HUNT: Second it.

16 MR. PARKS: Discussion?

17 All in favor, say I.

18 (UNANIMOUS VOTE)

19 MR. PARKS: Now, we have the Home
20 Improvement Commission report, which I guess
21 would probably be you, Beth.

22 MS. TARTER: I think we heard
23 back -- I'm not sure if we've heard back
24 from --

1 MS. LAZENBY: Two of them.

2 MS. TARTER: Okay.

3 MS. LAZENBY: They agree with the
4 recommendations.

5 MS. TARTER: Are those four total
6 members -- or three? Sorry.

7 MS. LAZENBY: It was just one.

8 MS. TARTER: How many members --
9 well, we have four on this.

10 MS. LAZENBY: We have four.

11 MS. TARTER: So I don't know how
12 to treat that, if two of them have approved
13 it?

14 MS. LAZENBY: They're just an
15 advisory committee.

16 MS. TARTER: Okay. So...

17 MR. PARKS: Well, may we have a
18 motion to accept the Home Improvement
19 Commission report items 1 through 6.

20 MR. HUNT: So moved.

21 MR. SANDRELL: Second.

22 MR. PARKS: Discussion?

23 All in favor, say I.

24 (UNANIMOUS VOTE)

1 MR. PARKS: Thank you.

2 Are you gentlemen with the
3 Forestry Commission?

4 [UNKNOWN]: Yes, sir.

5 MR. PARKS: Okay.

6 [UNKNOWN]: We're with the
7 Forestry Counsel.

8 MR. PARKS: Pardon?

9 [UNKNOWN]: We're with the
10 Forestry Counsel.

11 MR. PARKS: Okay. You are a
12 little early, but we're ready for you, if all
13 of your group is here.

14 [UNKNOWN]: We're waiting on one
15 more, sir.

16 MR. PARKS: Okay.

17 Let's move on then to our next
18 discussion item. Or our first discussion
19 item, which is financial statements and
20 retirement plans.

21 There's something behind Tab 7
22 related to this that I haven't read. Maybe,
23 we should all read that one page, half page.

24 The way I read it, he's saying

1 this would only apply to a sole proprietor
2 where he's using -- he doesn't have a
3 separate construction operation financial
4 statement.

5 And if a CPA has prepared that
6 sole proprietor's financial statement,
7 according to Financial Accounting Standards
8 Number 109 and/or GAP, then that statement
9 should recognize a tax liability for the
10 retirement plan.

11 In which case, we continue doing
12 what we do with working capital and count 50
13 percent, but we allow the other 50 percent to
14 remain as an asset.

15 Is that what y'all read as well?

16 MR. NEAL: Basically, yes. The
17 only thing I say about it is that statement
18 can be prepared in accordance with GAP and
19 take into consideration the provision for the
20 tax.

21 But it's not a requirement of the
22 CPA to verify whether or not that employee
23 can actually take it, because there are many
24 instances where it's a retirement plan, and

1 they can't take it until they're 62 or 65.
2 And there's no way we're going to know.

3 So I think the business of giving
4 them half is realistic, from our standpoint,
5 if you're going to give them anything.
6 Because there again, we don't know whether
7 they can take it or whether they can't.

8 MR. HUNT: Well, in some ways,
9 we're being generous --

10 MR. NEAL: Yes.

11 MR. HUNT: -- by giving half,
12 because there's no -- if they file
13 bankruptcy, that retirement plan, 401K, and
14 IRA, whatever is fully protected.

15 MR. NEAL: Right.

16 MR. HUNT: And someone cannot
17 attach. I'm not sure, can they really pledge
18 a retirement plan anyway?

19 MR. PARKS: It's permissible as
20 part of a personal financial statement. Or
21 I've never been told it wasn't. But I don't
22 know whether you -- I don't know that you can
23 truly pledge it either.

24 So do we want to modify or

1 consider altering our policy? That's his
2 question.

3 MR. HUNT: I don't think we
4 should.

5 MR. NEAL: I sure don't think we
6 should ever give him full credit.

7 MR. HUNT: No.

8 MR. PARKS: No. He's not talking
9 about full credit on the working capital.
10 He's only talking about full credit on the
11 net-worth side, provided there is a provision
12 for taxes due on the retirement plan.

13 Which I guess would only apply to
14 a 401K or some private account kind of a
15 thing. It wouldn't apply to some pension
16 plans for this guarantee, if you don't have
17 your own individual account.

18 MR. NEAL: Well, he's using half
19 of it for a current asset.

20 MR. STILL. For working capital,
21 then.

22 MR. NEAL: Yeah.

23 MR. PARKS: Yes, he is doing that.

24 MR. STILL: Okay. I thought you

1 said that he wasn't.

2 MR. PARKS: No. He's using half
3 for working capital. But, apparently, the
4 way he does it now, he takes the other half
5 out of the total assets.

6 He only counts -- if somebody's
7 got a \$100,000 IRA, automatically, their
8 assets are reduced by \$50,000, total assets
9 and current.

10 MR. STILL: That's not the way I
11 read it.

12 MR. NEAL: I don't -- I don't
13 know.

14 MR. PARKS: I think that's what
15 he's doing.

16 MR. NEAL: Well, he shouldn't do
17 that. I mean, because it definitely is their
18 net worth.

19 MR. PARKS: Yeah.

20 MR. NEAL: I mean, the only thing
21 in question is whether or not we're using any
22 of it for a current asset.

23 MR. PARKS: We use that, yeah. I
24 mean, we have been using half as a current --

1 allowing half as a current asset.

2 MR. NEAL: And I agree with Cliff,
3 that's probably very generous. But, you
4 know, it's no more generous than to allow for
5 real estate and homes under construction, in
6 today's climate, as working capital.

7 I mean, we all know that there's
8 dozens and dozens of them in foreclosure.
9 And for us to allow that, but I -- you know,
10 we haven't changed our policy.

11 MR. HUNT: I'll remind you,
12 though, that once we get this financial
13 statement with working capital and net worth,
14 what the law, or our policy, is it's up to 10
15 times.

16 That's when we come in and our
17 experience comes into play. And if someone
18 has all houses, if that's the major makeup of
19 the working capital, then we won't give them
20 10 times the working capital.

21 It's not automatic 10 times the
22 working capital and the net worth, it's up
23 to. So that's when we have to start looking
24 at it.

1 MR. PARKS: And the law allows us
2 to use discretion.

3 MR. HUNT: Yes.

4 MR. PARKS: So we keep the current
5 policy in place, unless somebody wishes to
6 change it?

7 Or do we need more information for
8 our next meeting?

9 Or do we want Matthew to appear at
10 our next meeting?

11 MS. LAZENBY: That might be best
12 to have Matthew appear. It will be in
13 Nashville.

14 MR. PARKS: Make sure we'll be in
15 Nashville, and make sure we're all truly the
16 same page.

17 MR. NEAL: Why don't we ask a
18 representative of a CPA firm?

19 MR. PARKS: Of a firm or the
20 Board?

21 MR. NEAL: A -- no, a legitimate
22 public accounting firm. Somebody that does
23 contractor's financial statements.

24 MR. PARKS: Okay.

1 MR. NEAL: Somebody with Davidson
2 Guillevan or Cooper Travis.

3 MR. PARKS: Yeah, Davidson has
4 come before us before.

5 MR. STILL: Yeah, I remember
6 they've been here before. Maybe, they would
7 been willing to do so.

8 MS. LAZENBY: Why don't we have
9 Matthew come, also?

10 MR. PARKS: Okay. We'll put that
11 on the agenda for next time. We'll defer any
12 action on this.

13 Okay.

14 MR. STILL: Let's do it this way.
15 Why don't -- why doesn't somebody, to save
16 that effort, why doesn't somebody try to get
17 an opinion from a CPA that deals in this sort
18 of thing?

19 If it's just way off the board, as
20 far as GAP is considered, maybe, we ought to
21 just table the suggestion.

22 MR. HUNT: Well, this goes beyond
23 just GAP opinions.

24 MR. PARKS: Yeah.

1 MR. HUNT: Because GAP will tell
2 them where to put it on the financial
3 statement. But in reality, that isn't,
4 necessarily, what -- it doesn't mean what GAP
5 says it means. Because it can be protected
6 from the bankruptcy court.

7 Somehow we've got to factor --
8 we've got to come up with a consistent way to
9 factor that in.

10 MR. STILL: Well, I certainly have
11 no problem with getting a CPA or public
12 accountant in here to discuss it, you know,
13 if we can get somebody that's interested in
14 that particular question.

15 MR. HUNT: You know, one thing a
16 CPA can't speak to is if they do draw out the
17 money, whether there's a penalty involved.
18 You know, a GAP statement won't address
19 that.

20 That's how we came up with the
21 50-percent value. Once we set 30-, or 35-,
22 36-percent.

23 MR. PARKS: They usually allow 80.

24 MR. HUNT: That tax rate plus

1 10-percent penalty, that gets you into the
2 upper 40s, and we just said let's just make
3 it 50 percent.

4 So that was the logic we used to
5 come up with the 50 percent that an
6 accountant can't speak to.

7 They'll say, Yeah, there is a
8 penalty. But as far as GAP putting together
9 a balance sheet, that can't be reflected.

10 MR. NEAL: Are you making a motion
11 that we leave it alone?

12 MR. HUNT: Well, I don't think we
13 need a motion to leave it alone. But...

14 MR. NEAL: Well, we need something
15 to either say -- answer his question, no,
16 we're not going to change.

17 MR. HUNT: I'll make a motion that
18 we leave our current policy as it is.

19 MR. NEAL: Second it.

20 MR. PARKS: Any other discussion?

21 All in favor, say I.

22 (UNANIMOUS VOTE)

23 MR. PARKS: All right. And I
24 gather, since another person is in the

1 audience, we have everybody from the
2 Tennessee Urban Forestry Counsel?

3 [UNKNOWN]: One guy that's walking
4 up the elevator right now.

5 MR. PARKS: Well, I think he's at
6 the top.

7 If you'd like, come on up to this
8 table, whoever is going to speak, everybody
9 that's going to speak. Bring more chairs, if
10 you want to.

11 MR. HALLER: Okay. I just want to
12 introduce myself, first of all. My name is
13 Patrick Haller. I am the immediate --

14 MR. PARKS: Would you spell it,
15 please, for our reporter?

16 MR. HALLER: H-A-L-L-E-R, Patrick
17 Haller.

18 I'm the immediate past president
19 of the Tennessee Urban Forestry Counsel.
20 I've been involved since 2001.

21 Real brief, the Tennessee Urban
22 Forestry Counsel has created as of a 1990
23 farm bill that said every state must have an
24 advisory counsel to the Forestry Commission

1 on, basically, urban areas in our states.

2 Our basic mission is we promote
3 putting trees and green spaces back in our
4 communities. And we, basically, do a lot of
5 tree issues. We handle the certified
6 arboretum program for Tennessee. We work
7 with the Landmark and Historic Tree Registry.
8 We do a lot of education workshops across the
9 state.

10 But in particular, I have been
11 trying to get a meeting with you guys for the
12 last six or seven years, in fact, when
13 Phyllis Blevens was executive director.

14 I talked with Carolyn about a
15 month ago or two months ago. And I
16 appreciate very much, she got me a meeting
17 with you folks now.

18 Professionally, I own a landscape
19 company in Middle Tennessee. I've owned it
20 for about 11 years. And from my own personal
21 experience, I deal with a lot of issues that
22 contractors and developers have caused damage
23 to a lot of our trees that customers are,
24 basically, wanting to save.

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1 They buy these homes in these
2 wooded-lot areas, and they pay extra money
3 for this. And after a lot of construction
4 damage that has occurred because of the home
5 being built around these trees, they wind up
6 having to take them down.

7 So we are -- our basic premise
8 today is, we would like to propose putting
9 some questions on the general contractors
10 exam pertaining to tree protection or
11 protecting trees during construction, basic
12 tree biology. So that the general
13 contractors, when they build these homes, are
14 aware of there's other surroundings besides
15 just, you know, just building the home
16 itself.

17 I have with me today a couple of
18 people that are past members of the counsel
19 and current members of the counsel. I have
20 Eric Bridges. He is the environmental --

21 MR. BRIDGES: Natural resource
22 director.

23 MR. HALLER: Natural resource
24 director for the City of Lakeland. He is a

1 past member of this counsel. And he deals
2 directly with developers and contractors on a
3 daily basis.

4 I have Alan Wyatt. He is the
5 current president of our chapter here in West
6 Tennessee. He's a landscape architect.

7 I also have Jimmy Ferrell who owns
8 a private arborist company. And Sean Posey,
9 who is the West Tennessee regional urban
10 forester. He does work for the State.

11 So these people -- all of us deal
12 with, basically, day-to-day tree-care issues
13 that we see caused a lot of times by
14 construction damage and developers.

15 Not everybody does it, but we kind
16 of want to get the word out and spread the
17 education.

18 What I have today -- I only have
19 three extra copies of these. I'll give these
20 to you. These are hand-held pamphlets for
21 builders and developers prepared by the City
22 of Chattanooga's Urban Forestry City Forestry
23 Gene Hyde. He is the first president of our
24 counsel.

1 And these, basically, are
2 information brochures that he hands out to
3 contractors down there on proper tree care,
4 what they need to be made aware of and how
5 to, basically, you know, keep these trees
6 healthy while they're building the homes.

7 I forwarded the questions that we
8 are interested in putting on the exam to
9 Carolyn. I guess the Board has those with
10 you. /

11 MS. LAZENBY: Yes. They're behind
12 Tab 6.

13 MR. HALLER: So that's basically,
14 what we want. We'd like to have those put on
15 there.

16 I know you have different sections
17 to your exam. You have, you know, the
18 building BC section. You have a mechanical
19 section. And you have an electrical section.

20 I think after looking through that
21 with my basic knowledge of how your program
22 works, I think it's probably best to go under
23 the BC section, regular residential building
24 codes and contracting stuff.

1 I would like to turn the floor
2 over to each of the individuals and let them
3 talk about their own personal experiences.

4 And Eric, I think, would be the
5 best one to start out with, because he deals
6 with it on the front end. Every developer
7 and contractor has to go through Eric first
8 before they do any work in Lakeland.

9 I kind of wanted to let each one
10 talk briefly. I know you're busy folks, but
11 kind of give you more of a feel of what it is
12 we're trying to do.

13 MR. PARKS: Yes. Please do.
14 Please don't repeat what he said, because we
15 do have a lot to do this afternoona, like he
16 said.

17 MR. BRIDGES: I appreciate it.
18 It's Eric Bridges, B-R-I-D-G-E-S. I don't
19 know if you require an address.

20 MR. PARKS: We don't.

21 MR. BRIDGES: Okay. I thank
22 everybody.

23 MR. PARKS: We're not in court.

24 MR. BRIDGES: Thank you. Maybe,

1 that's where I learned that.

2 Like Patrick said, I work for the
3 City of Lakeland, and I am president of the
4 local chapter of the Society of American
5 Foresters.

6 We deal with this on a daily basis
7 with contractors and developers. We're not
8 here to talk about the developers at this
9 point, of course. That's a different beast,
10 a different animal, that we deal with when
11 you're laying out a subdivision type.

12 But when you get down to the lot
13 level and you're actually putting
14 improvements on a lot that's been recorded,
15 that's where this sort of comes into play.

16 What we have found is in the
17 development process, we can sort of work
18 with, and we can get conservation easements
19 in large tracts of land and such. But when
20 you're trying to keep trees on a property
21 that's around a home, it's very difficult.

22 Of course, as every builder knows,
23 there's so many things that have to go on in
24 that limited envelope that you have to work

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1 in. And what often happens is, the
2 contractor gets a bad rep out of it, because
3 the homeowner, if you're building a -- not a
4 speck house but a home for the homeowner,
5 they want that tree. They identify with
6 something on that lot, and they say, Please,
7 don't remove it.

8 The contractor often comes to us
9 and says, we are -- they already know they're
10 going to kill the tree. But they feel, like,
11 bound to give this to their client and do the
12 best they can.

13 So we end up on the property
14 almost fighting for the removal of something
15 like that. But what we would rather see is
16 what we call the right tree, right place.
17 That's all we're trying to promote at this
18 point.

19 Sometimes a tree shouldn't stay.
20 I mean, and that's just a given. It's going
21 to not become an asset but a liability. It
22 will die in three to five years. And we
23 always see that. It's the same time frame
24 every time.

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1 And then the homeowner gets -- I
2 mean, the home builder gets called back, and
3 they have to do things they shouldn't have to
4 do.

5 So that's what we're trying to
6 promote is just education. And we have found
7 that the regulations is only a small part of
8 the process. Regulating is something you can
9 do to a limited degree. Education is key.
10 Once the contractor has come to some of our
11 classes -- we offer some classes at night --
12 and they start to understand what we're
13 talking about, they seem to have a much
14 easier time of going on the property, of
15 working with that homeowner, and giving them
16 something that will be lasting of value and
17 not something that's going to become a
18 liability in a few years.

19 And it's just -- we also
20 understand that it's a complicated process to
21 get your builder's license. And they're
22 trying to work on so many things. There's so
23 much infrastructure in a tight area that we
24 don't want to add an inordinate amount of

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1 material into an exam for people that aren't
2 trained arborists. We certainly wouldn't
3 want to put them to the level of a certified
4 arborist exam material, but we also think it
5 would be important to have that discussion,
6 at least get it started.

7 So I think the goal, if I'm
8 reading Patrick right -- he's done a real
9 good job spearheading this -- is to start the
10 dialog. See if we can get somewhere, and at
11 least get started talking about this, and see
12 what level would be a comfort to get into the
13 exam, and where it would fit in the exam, and
14 which one of your exams would fit it best.

15 If you have any questions, I'd be
16 happy to answer them. That's it, very
17 briefly.

18 MR. PARKS: Thank you.

19 MR. BRIDGES: Thank you.

20 MR. WYATT: Good afternoon. I'm
21 Alan Wyatt, A-L-A-N W-Y-A-T-T.

22 I am a landscape architect and
23 current president of Western Tennessee Urban
24 Forestry Counsel.

1 As a landscape architect and as a
2 person interested in trees and vegetation, a
3 lot of the times what we see is, at the
4 beginning of projects, of course, most
5 municipalities now require tree surveys,
6 arborists to come in and do surveys of
7 existing vegetation to protect.

8 We, as landscape architects, work
9 with our foresters, our arborists, and
10 contractors in developing the guidelines and
11 requirements to protect those trees.

12 Trees have become really very
13 important to communities based on now
14 everybody is looking at green and trying to
15 protect the natural environment and natural
16 resources. And it's really becoming a
17 quality-of-life issue for many communities.

18 What we see from a design
19 perspective and also as an interest in
20 existing vegetation is, as we work with our
21 arborists, foresters, and other professionals
22 in identifying and protecting this
23 vegetation, when we complete the documents
24 and we work through the municipalities and

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1 the regulatory agencies and documenting it
2 and providing this documentation for bidding,
3 a lot of the contractors don't understand a
4 lot of times the processes that they need to
5 go through in order to project the
6 vegetation.

7 And then what's kind of disturbing
8 and very unfortunate is after we go through
9 this process of -- on the bid documents
10 identifying to protect some of these trees,
11 unfortunately, during the construction, some
12 of these trees are destroyed or damaged
13 beyond repair.

14 And, unfortunately, it's the
15 contractor that gets caught in the middle of
16 this with the owner. And here, they're
17 forced to deal with it, based on the
18 governing agencies and subdivision
19 regulations. And a lot of times, it's just
20 not a knowledge of how to deal with these
21 trees and how to really protect them and try
22 to preserve the vegetation that needs to be
23 protected.

24 So when it comes to education of

1 the contractors, again, I concur with my
2 colleagues here that education is a critical
3 component of this.

4 Many contractors try to do the
5 best to preserve and protect these natural
6 resources and trees that are on site, but,
7 unfortunately, sometimes because of the lack
8 of knowledge and sometimes just negligence,
9 these trees are destroyed. Then you have an
10 issue with the governing agencies.

11 So from the basis of looking at it
12 from a landscape architect, one that deals
13 with tree surveys and planting plans and
14 that, and, also, I sit on the Bartlett Design
15 and Review Commission so I get to see that
16 perspective as well as a regulatory agency, I
17 think through education, through making sure
18 that our contractors understand the
19 importance, and how to do it properly, that
20 we can really start saving some of this
21 vegetation and trees and keep from incurring
22 damage and problems with our municipalities
23 and the contractors in the future.

24 Thank you.

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1 MR. PARKS: Thank you-all. We,
2 just as a matter of information, changed test
3 vendors a year and a half ago.

4 MS. LAZENBY: In '06.

5 MR. PARKS: Coming up on two years
6 ago. And the firm is now PSI. They do
7 contractor testing in a number of states, a
8 number of states that Tennessee touches and
9 states that Tennessee reciprocates with.

10 So it's not this Board's decision,
11 I don't think, just to automatically say add
12 these 12 questions to the test. It's a
13 little more complicated than that, in that I
14 sat on that test development committee and
15 saw how they go about it.

16 They have a huge database of
17 question, which I would encourage y'all to be
18 in touch with them, especially, if you've got
19 similar urban forestry counsels in other
20 states where PSI does the testing. That's a
21 good place to get these questions brought
22 in.

23 I'm a contractor from
24 Chattanooga.

1 MR. WYATT: Do you know Gene?

2 MR. PARKS: I'm familiar with
3 this.

4 MR. WYATT: Oh, okay. Do you know
5 Gene?

6 MR. PARKS: And we've got a pretty
7 strict landscape ordinance. And,
8 consequently, a lot of the commercial plans
9 that I see go into pretty good detail about
10 what you've got to protect and how you've got
11 to protect and what you can and can't do as
12 it relates to existing trees on the sites or
13 about a site on new trees we have to
14 replant.

15 I can't say how much detail is
16 required on residential. And as y'all said,
17 that's where a lot of problems come from,
18 from home builders and dozer operators just
19 clearing the path and start building.

20 MR. WYATT: It's a little bit of
21 both.

22 MR. PARKS: Yeah. So I don't know
23 that -- one of the questions I had, Carolyn,
24 might we do a link on our web site to

1 something related to tree preservation,
2 preparation, protection or their link or
3 whatever?

4 MS. LAZENBY: We've already done
5 that. We've put that on there a few months
6 ago.

7 MR. PARKS: Okay.

8 MR. HALLER: That I knew she did.
9 And thank you.

10 MR. PARKS: Okay.

11 MR. HALLER: We appreciate that.

12 MR. PARKS: So anybody -- I
13 started talking right away without asking for
14 questions.

15 Has anybody else got questions for
16 them or other comments on what they said?

17 MR. HUNT: Well, it may be only
18 the best we can do is get kind of a general
19 question that would direct a contractor or
20 just make him aware of the situation.

21 Because a contractor in West
22 Tennessee is going to deal with different
23 tree issues than one in East Tennessee and
24 one in Chattanooga, and it's hard to come up

1 with one or two questions that will work all
2 across the state.

3 So, maybe, there will be a better
4 way of directing them to some type of service
5 or just general education questions or let
6 them know that that's something they need to
7 be thinking about before they go on to a lot
8 and start construction, rather than asking
9 how many feet out is the root zone. More of
10 a general question.

11 Make them aware so that they know
12 to get in touch with somebody in your
13 profession.

14 MR. HALLER: You're right, sir.

15 Every municipality has its own
16 regulations. And every county planning board
17 has their own set of rules as well.

18 The State dictates that there are
19 certain things they have to ask for in the
20 regional planning commission, but every
21 planning commission can add or take away
22 certain things that they want to do.

23 But in terms of basic tree health,
24 that is pretty well statewide and

1 international. The International Society of
2 Horticulture gives the certified arborists
3 exam, and, basically, there are a set of
4 basic questions that would apply to you
5 folks.

6 I guess what we're looking for is
7 a blessing from the Board here today to go
8 ahead and either approve these questions or
9 pursue the further pursuit of contacting
10 PSI.

11 I guess, what I'm getting from you
12 is, you guys have no authority to put the
13 questions on the exam. PSI does, if I
14 understand you correctly.

15 But, maybe, a blessing from you
16 guys saying that we recognize that we're
17 trying to reduce liability, increase safety
18 to the citizens of Tennessee, and increase
19 the value of these lots and these homes.
20 Because these things are living legacies, per
21 se, around these homes, and that's what the
22 customer wants.

23 MR. PARKS: And we do. There's
24 about four different BC categories, and I'm

1 back to one of the earliest things you said.

2 MR. HALLER: Yes, sir.

3 MR. PARKS: There's residential.

4 There's commercial. There's

5 residential/small commercial. There's

6 industrial. There's all of the above.

7 MR. HALLER: Right.

8 MR. PARKS: But I don't know, in a
9 -- well, Carolyn can certainly put you in
10 contact with someone with PSI.

11 MR. HALLER: And that would be our
12 next thing?

13 MR. PARKS: To begin, I think, to
14 just, you know, start, I guess, to an extent,
15 educating them on the need, the rationale for
16 doing it, and let them work some in to it.

17 We, as, I think, the Contractor
18 Licensing Board, we're charged with
19 protecting the health, safety, and welfare, I
20 think it says. We are, I don't want to say
21 more concerned with codes than trees, but,
22 obviously, we want a safe structure built,
23 and a structure's not safe if there's a dead
24 tree by it about to fall over on it.

1 MR. HALLER: Yes, sir.

2 MR. PARKS: So, you know, they do
3 go hand in hand.

4 MR. HALLER: Yes, sir.

5 MR. PARKS: But it -- but we --
6 you know, I don't -- there's, I think, a
7 100-question test and we can't take 12
8 percent of that and dedicate it to trees.

9 MR. HALLER: I'm not asking that.
10 I'm just asking --

11 MR. PARKS: Right. You know, but
12 we have to -- there has to be something, and
13 it's not up to us to judge or to tell PSI how
14 to modify the content. Because they're the,
15 quote, experts.

16 MR. HALLER: I see.

17 MR. PARKS: In developing these
18 tests. They are a very impressive company,
19 after having dealt with them.

20 MR. WYATT: So we can move forward
21 in talking to PSI with your blessing and
22 recommendation?

23 MR. PARKS: Yeah. I don't think
24 any of us have a problem with that, do we?

1 MR. NEAL: Well, I wouldn't think
2 so. It looks to me like it ought to be
3 limited to residential construction.

4 It seems like that's where your
5 major concern is, with houses on lots.

6 I know, from a commercial-building
7 standpoint, if you take down a tree, you've
8 got to plant 20 more to replace that one, so
9 to speak, in most areas.

10 But if you had it on the
11 residential, you know, for landscape, we
12 don't require anything here other than
13 business and law tests.

14 MR. WYATT: I see it relevant to
15 all your building categories.

16 I think all of us can attest or
17 talk about some of the issues we've seen in
18 industrial, commercial, and residential
19 issues from tree damaging. I think it's just
20 not limited to mostly residential. I think
21 it's broader than just that.

22 MR. PARKS: It's much more
23 applicable to residential. Maybe, that's the
24 better way of saying it.

1 MR. HUNT: Could we do this? What
2 if -- I'd feel better if we had a letter
3 drafted from Carolyn giving the Board's
4 approval or --

5 MR. HALLER: Blessing?

6 MR. HUNT: Maybe, not blessing,
7 but something from the Board that would --
8 kind of introduce this organization to PSI,
9 and that the Board takes it seriously. You
10 know, word it in a good way, rather than have
11 them go to PSI and say, Well, the Board has
12 blessed it.

13 MR. PARKS: Yeah. I would agree
14 with that.

15 MR. HALLER: It won't be a cold
16 call.

17 MR. PARKS: And, then, you know,
18 you might even provide a position statement
19 or a brochure or reference to something
20 Congress did in '91, I think you said was the
21 date.

22 MR. HALLER: 1990, the Farm Bill
23 Act.

24 MR. PARKS: You know, reference to

1 that, and let her include that or attach it
2 as backup. And we can certainly do that, and
3 give you an introduction and the contact
4 person to, again, share some information and
5 educate them.

6 MR. HALLER: Thank you. That's a
7 definite start.

8 MR. PARKS: Okay.

9 MR. HALLER: So after six years,
10 thank you.

11 MR. PARKS: You're welcome.

12 Anybody else got any other
13 questions for them or you for us?

14 MR. WHITTINGTON. The only thing I
15 want to say about it. I've been trying to
16 pick the right spot to get in and haven't
17 been able to.

18 But as a single-family home
19 builder, the last thing we're out to do is to
20 destroy, probably, one of the most valuable
21 assets to the lot that we are building on.

22 The only way we would remove a
23 tree is if it was actually in the foot print
24 of the house or within danger zone of the

1 foot print of the house. And I think you'll
2 find that most home builders are that way.

3 Having said that, before I think
4 we could even consider adding questions, I
5 think that there would have to be some type
6 of an educational program commenced.

7 And I would recommend that a good
8 start for you guys would be through your
9 local home builders associations, through
10 your state home builder's association, and
11 even through the national home builder's
12 association.

13 Because you're going to start
14 asking questions of new applicants, which
15 they may take a pre-exam study course and
16 that be covered. And then again, they may
17 not take that pre-exam. Some people opt out.

18 So with no education, I feel like
19 that they would be at a great disadvantage to
20 have that question, whether it is
21 residential, commercial, or industrial,
22 thrown at them without any preeducation.

23 So that's my real feelings is
24 partly why I, for one Board member, couldn't

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1 give you a blessing. But I would give you
2 encouragement to get education started
3 through those avenues.

4 MR. HALLER: Could your letter
5 state that? That we take that and we talk to
6 these building associations and say we've
7 talked to the Board of Licensing Contractors,
8 and they're advocating an education to each
9 of the associations within that same letter
10 do you think? Because I'm kind of
11 persistent, and I would definitely contact
12 these organizations. I'm trying to get
13 involved with the one where I'm living in
14 Middle Tennessee right now.

15 MR. WHITTINGTON: I'm not
16 advocating anything. I'm recommending to you
17 that you do that.

18 MR. HALLER: Right. And,
19 definitely, we will. We, definitely, will do
20 that.

21 But I think the -- I guess
22 something from you guys will go a long ways
23 as we can move forward with this. Like what
24 you said, Mr. Hunt, how you could help us

1 formally, and that letter, per se, is a good
2 start.

3 MR. PARKS: We will get him the
4 first draft.

5 Okay.

6 MR. OWENS: I have a quick
7 question.

8 Were you through?

9 MR. WHITTINGTON: Yes, I'm done.

10 MR. OWENS: Okay. I had a quick
11 question. I've seen more references as it
12 related to trees staying from the -- don't
13 beyond the drip line, you know. I've never
14 seen the trunk mentioned too much.

15 What benefit would that be to a
16 contractor working from the drip line than
17 the trunk?

18 MR. BRIDGES: The critical
19 component isn't, of course, the trunk. It's
20 the root system. Well, we use the term
21 "critical root zone," which is the area we
22 sort of define as if you stay out of or
23 protect this critical area of roots, we'll
24 give a 99-percent chance of survival of that

1 tree, the ultimate chance of survival.

2 It's based on tree species and
3 their tolerance to disturbance, their age,
4 and health, and then you calculate a formula
5 that goes with that.

6 That's a little bit hard to do on
7 a site, to go out and ask someone to
8 calculate a distance in a circle around a
9 tree, so, oftentimes, people use drip line.
10 And, unfortunately, it doesn't usually cover
11 enough of the root mass to incorporate all
12 the roots you need to keep the tree alive.

13 You just need -- you need a lot of
14 space, really. The roots stay so shallow and
15 broad spread. But if you're close enough to
16 hit the trunk -- this is our rule -- you've
17 already done the damage beneath you.

18 So it's not the trunk damage we're
19 worried about. And even if you did reach
20 over and hit it with something, a long-arm
21 track hoe or something, that can be rectified
22 a little easier than root damage can be. We
23 can do things to prevent the bore
24 infestations and that type of thing, but once

1 the root system is compacted and no air and
2 water are actually going through the soil,
3 it's a real hard job to rectify that
4 situation. You're pretty much left with the
5 removal.

6 That's why we talk about the drip
7 line. Often you hear that and not the
8 trunk.

9 I don't know if I answered your
10 question.

11 MR. OWENS: Yes, you did.

12 MR. HALLER: Okay. Thank you.

13 If I may also state something
14 about education, Tennessee State University
15 and Tennessee Technological University are
16 combining to produce a series of hazard tree
17 assessment workshops throughout Tennessee.
18 There are two more left, one in Jackson on
19 June 18th, and there will be one at our
20 conference in September, which is the 10th
21 and 11th.

22 If you guys are either in Jackson
23 on June 18th or in Knoxville during the 10th
24 or 11th, I personally invite you as my

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1 guests, since I'm the one teaching that
2 class. If you want to come and kind of get
3 more of that.

4 Carolyn came to the one in
5 Nashville back on April 18th. She thought it
6 was interesting, the little bit that you saw
7 during that day.

8 MS. LAZENBY: Right. It really
9 was.

10 MR. WYATT: And that's a good
11 start, you know. And I think that's a good
12 way to open up, I think, the dialog with us.

13 MR. PARKS: Okay. Anything else?
14 I thank y'all.

15 MR. WYATT: Thank you.

16 MR. HALLER: Thank you very much.

17 MR. PARKS: The next item is the
18 Louisiana licensing law. Revoking
19 procedures. F.N., I assume that's Mr. Neal,
20 because I don't know about this stuff. I
21 don't know about this one.

22 MR. NEAL. This is a notice that
23 the Louisiana State Licensing Board for
24 Contractors put out for information purposes,

1 really. It was after the fact that they had
2 produced a bill in the legislature, which
3 passed, and it's kind of capitalized, Don't
4 Take a Chance of Having Your Contractors
5 License Suspended or Revoked.

6 And then it goes on to say that
7 Louisiana RS 37.2158 provides that the Board
8 may revoke or suspend a contractors license
9 if a contractor permits his license to be
10 used by another person/firm who is not
11 licensed.

12 Then it goes on to say that if he
13 enters into a contract with any unlicensed
14 contractor, the same thing.

15 But the point being is that in
16 Louisiana, the Board can take or suspend
17 licenses. And here, of course, we have to go
18 through an onerous process of having what's
19 called a formal hearing in order to do that.

20 And by the time that happens, you
21 know, the guy may have already slane four
22 more dragons. No reflection on not having
23 formals. Nobody likes them.

24 But I just bring it to the

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1 attention of the Board, in that, maybe, in
2 our next session of the legislature, we might
3 get typical or legislation of this same type
4 passed in Tennessee.

5 MR. PARKS: Is this -- where does
6 that play into that property right thing,
7 Beth?

8 MS. TARTER: I know there's a
9 provision about -- I mean, they, Louisiana --
10 you know, I don't know. It's Louisiana.
11 But, you know, they are under, like, kind of
12 different laws.

13 MR. PARKS: They are. You're
14 right.

15 MS. TARTER: I mean, the due
16 process is universal. I mean, it's a
17 nation -- it's under federal constitution.

18 I know that there are some
19 provisions under administrative law that if,
20 say, a license had been revoked in another
21 state, they can't come over here and get a
22 license here, you know, and we can get that.
23 Then we can summarily revoke their license.

24 But there's not many other

1 opportunities that we can do it, because
2 believe me we've looked for it, that we have
3 a provision in legislature now that would
4 change the law that would allow us to do it.
5 That would be --

6 MR. NEAL: Well, that's what they
7 had to do in Louisiana. They changed their
8 law to where they said that their Board could
9 do that.

10 MS. TARTER: Right.

11 MR. NEAL: And, you know, does it
12 violate any federal law?

13 MS. TARTER: I'm not sure. I'm
14 not very familiar with this, but that would
15 be something for someone to have their
16 license revoked and then sue them.

17 MR. WHITTINGTON: It looks to me
18 like down in Section B it says, "In order to
19 enforce the provisions of this chapter, the
20 Board may conduct hearings."

21 MR. NEAL: Well, that's in ours.

22 MR. PARKS: Oh, is that in ours?

23 MR. NEAL: Yeah.

24 MR. PARKS: Now, this is --

1 [Multiple voices.]

2 MR. PARKS: Now, this is Louisiana
3 law we're reading.

4 MR. WHITTINGTON: This is the
5 Louisiana law.

6 MR. PARKS: Yeah.

7 MR. WHITTINGTON: So in order for
8 them to do it, they have to conduct a
9 hearing.

10 MR. NEAL: Well, this bulletin
11 here has no date on it that I can see. It's
12 just published to inform an update
13 Louisiana's construction industry.

14 And I don't know when, you know,
15 Louisiana RS 37.2150 -- I mean, this blue
16 book we've got is already out of date.

17 So, I mean, this may have been
18 changed since this was written right here.
19 Because it's pretty clear what this says. I
20 mean, it says the Board can do it.

21 MR. WHITTINGTON:

22 MR. PARKS: Well, I would ask then
23 that you give Beth a copy of that and let her
24 find out. Let her understand it better.

1 MR. WHITTINGTON: Yeah.

2 MR. PARKS: And see. Because it
3 will be, I guess, at our next meeting. We'll
4 have a director from upstairs to vote the
5 legislative package. They always have. In
6 July and August is when they want it.

7 MR. WHITTINGTON: Right.

8 MS. TARTER: Yeah. And it looks
9 like -- I mean, there's something down here
10 that's under Section 315, License Revocation
11 and Suspension. It says something about
12 after due and proper hearing.

13 But I do know -- if we're looking
14 for a way to make things a lot easier, I do
15 know that there's some other boards that
16 actually state that. Or there's legislation
17 that says that they're required to have a
18 current license, and if service is obtained
19 on that -- or a current address, and if
20 service is obtained on that.

21 One of our biggest things is we
22 can't find people. And just mailing it to
23 the last known address isn't sufficient
24 notice under our administrative law. We have

1 to prove that we've tried to look for them in
2 other places and things like that.

3 However, if the Board had some
4 sort of a requirement that that address is,
5 for example, with attorneys, that address is
6 proper service.

7 So if an attorney moves, there are
8 not only obligated to notify the Board of
9 Professional Responsibility, but if they
10 don't and something is mailed to them at that
11 address, that's proper notice. And they can
12 proceed to a formal. That's considered
13 proper notice for their due process
14 requirement.

15 So I'm just totally throwing that
16 out there.

17 MR. PARKS: Well, that would be a
18 very good little tweaking.

19 MS. TARTER: That's one thing that
20 actual other boards in Tennessee have but
21 this one doesn't. And I can look. That
22 could be something else that I could check
23 into more, but that was something we were
24 kind of batting around.

1 MR. PARKS: Okay.

2 MS. TARTER: And I can look, now
3 that I've got these citations for these, I
4 can check these out under West Law and get a
5 basis.

6 MR. PARKS: Okay. Anything else
7 under relating to Louisiana that anybody
8 wants to add or question?

9 MR. HUNT: Are we, in fact, going
10 to have someone there about the legislative
11 package in July?

12 MR. PARKS: I don't know. That's
13 become the norm, but I don't know.

14 MR. HUNT: Can we have -- is there
15 a list, a wish list of legislative items?

16 MS. TARTER: Yeah. We did do a
17 wish list last year.

18 MS. LAZENBY: We do a wish list
19 every year.

20 MR. HUNT: All right. Can that be
21 circulated around much prior to that meeting
22 so that you can get input from the board
23 members?

24 MR. PARKS: Well, let's set some

1 time on the July agenda to discuss it.

2 Any other comment on that topic?

3 The next one is reciprocity
4 policy, which I've brought about and created
5 some confusion over it. At the last meeting,
6 I brought it up, because of what's happened
7 with the State of Georgia's new law, and
8 they're not reciprocating.

9 As I have been reviewing files for
10 waive or class changes or adding a class or
11 waiver of interview, I've run across a number
12 of applicants who are from either states that
13 have no licensing laws or, maybe, a state
14 that has a licensing law but we don't
15 reciprocate with.

16 I also called and talked with
17 Chuck Marceau, who is head of the Louisiana
18 board -- or the head staff person in
19 Louisiana. Is it Gary Crow? Is that his
20 name in Arkansas?

21 MS. LAZENBY: Greg.

22 MR. PARKS: Greg Crow, who is
23 Arkansas, and Norman Brooks in Mississippi.
24 And those three all say when -- either what

1 their practice is or when the reciprocity
2 thing came up through NASCLA that it was
3 based on a person's home state.

4 North Carolina does not give any
5 consideration to a person's home state. One
6 of the three that do said either a
7 contractor's home state or a state in which
8 the particular contractor has a permanent
9 branch office, giving a little more leeway.

10 Since then, we've had the question
11 raised by a contractor, I believe, who was
12 from Pennsylvania saying he took the test in
13 North Carolina or South Carolina -- I don't
14 know which -- but another state that PSI
15 administers their exams. And PSI has
16 confirmed for me that the Tennessee exam and
17 that particular state's exam are virtually
18 identical.

19 I go back on having thought about
20 all of this, and partly due to Georgia and
21 what they're doing or not doing. One of
22 our -- and if you look behind Tab 9 on the
23 second page, third paragraph from the bottom,
24 our instructions on our web site say to get

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1 the form returned from, quote, your state.
2 And that's their direction or their state.

3 So I say our instructions say
4 their home state and not just any state. So
5 I've either rejected or we've put on hold a
6 handful of applicants during this last cycle,
7 and I would like it to become Board policy
8 that we reciprocate with people's home states
9 or states where they have branch offices or
10 if they have taken a test which PSI says is
11 the same or substantially the same, that we
12 consider that.

13 But that we don't take somebody
14 from some state -- and I'm not going to even
15 try to name one, who has had a license in
16 some state we do reciprocate with for years
17 without proof of what test they took.

18 And there are some of these that I
19 even looked at today that just say renovation
20 and something. I think there was somebody
21 from Alabama, which is a state we've never
22 questioned. But the way they wrote it made
23 me question it today. So I just put it
24 aside.

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1 But I'm a little -- I've become --
2 I've gotten more concerned that we were just
3 waiving, accepting anything versus enough due
4 diligence or investigation to even see what
5 test somebody has taken when they're wanting
6 to reciprocate.

7 MS. LAZENBY: One thing you might
8 want to also consider is if these other
9 states require that the contractor has been
10 licensed at least three years in that state.

11 MR. PARKS: True. That's right.
12 A couple of -- I know two are that way.

13 So does anybody have any argument
14 with me? Support for me? Questions for me?

15 MR. NEAL: Since you do most of
16 them, I suggest you do them any way you want
17 to.

18 MR. PARKS: Well, I want there to
19 be a policy, since I don't do all of them.
20 And I do think we need to be on record,
21 because it has -- you know, I have created
22 some confusion for Cathy, and I apologize.

23 MR. OWENS: Larry.

24 MR. PARKS: Yes.

1 MR. OWENS: I have a question.

2 MR. PARKS: All right.

3 MR. OWENS: The test that you take
4 in Louisiana, apparently, they have two
5 tests. One is residential, and one is
6 commercial.

7 I went there to take their
8 commercial test, and, apparently, they gave
9 me a residential test, because it had nothing
10 to do with commercial construction, only
11 houses. How would you cut a pitch for a
12 valley?

13 And I failed the test, because,
14 you know, I've never built a house. I've
15 never been a carpenter. I mean, all of it
16 was foreign to me.

17 MR. PARKS: Well, you know, that's
18 something this Board has put up with, due to
19 some of the exams giving misinformation. And
20 I don't know whether you -- you know, whether
21 somebody read your application wrong, or you
22 checked the box wrong, or they didn't care,
23 or you didn't know better.

24 MR. OWENS: I didn't know better,

1 because I was looking for the test, the
2 commercial test.

3 MR. PARKS: Right.

4 MR. HUNT: Larry, I've got a
5 question for you. And I understand where
6 you're heading to, and I like the direction
7 you're heading. But how did you go about
8 determining if somebody has a permanent
9 office, or whatever, in a state which is not
10 their home state?

11 Are we going to put work on our
12 staff to try to determine that somebody has
13 an office in this state?

14 MR. PARKS: I don't think that it
15 would be that many where that applied.
16 Because I, frankly, don't see that many
17 general contractors with branch offices,
18 unless they're the Turners and the Stanskys
19 and the Brasfield & Gorrie, and those aren't
20 the people that are applying.

21 One of the letters I read today
22 said -- and I don't remember where this
23 company was from, but they mentioned offices
24 in three other states. But they're licensed

1 in seven or eight other states.

2 I would think we could ask them
3 for an address and how long they've had it or
4 modify our forms just a little bit to
5 eliminate a lot of extra work by just having
6 a couple of extra questions to go on the
7 reciprocity form.

8 MR. HUNT: All right. This
9 language you refer to in Section 9, where did
10 that come from?

11 MR. PARKS: That is off of our web
12 site.

13 MS. LAZENBY: Right.

14 MR. PARKS: And the application
15 form, if you have the written form.

16 MR. HUNT: What does the law say,
17 the reciprocity law say, Beth? Do you know
18 offhand?

19 MS. TARTER: It's in a
20 different -- you know, the short answer is
21 it's actually in a different statute, and I
22 don't think I brought that book with me.

23 I know I looked it up about this,
24 and it wasn't on point, really. I can kind

1 of look at it again. But it didn't really
2 say one way or another. That's why I kind of
3 just left it. I was kind of winging it about
4 place of residence or domiciliary.

5 MR. PARKS: I had never heard of
6 the word except when Marceau used it, but
7 I've liked it since.

8 MS. TARTER: But we're talking
9 about different laws applying or, you know,
10 like, if someone gets in a car accident in
11 one state, which state has jurisdiction and
12 that kind of thing. And that's where I was
13 talking about, like, a principal place of
14 business or proof of.

15 It's kind of like the residency
16 requirement when you're talking about someone
17 requiring them to be there for two or three
18 years. Kind of along those lines. Having
19 enough connections to that state to prove
20 that they're from that state versus just
21 passing through.

22 MR. HUNT: Well, I have no problem
23 with just saying your home state. Period.
24 And leaving it at that.

1 MR. PARKS: And I don't -- and I,
2 also, don't have a problem with if, you know,
3 it's a company that's growing, or if they're
4 following a, you know, hotel chain or a
5 restaurant chain or something around and they
6 all of the sudden need a license in
7 Tennessee. They've just taken what PSI tells
8 me is a comparable test in another state,
9 honor that score. I don't have a problem
10 with that.

11 Because, you know, why make them
12 -- why make money for PSI? That's not our
13 goal. And make the contractor's job harder
14 to get a license. I just want to know that
15 they're qualified on some, you know, I guess
16 a fairly-level playing field.

17 MS. LAZENBY: The only thing that
18 would really help us is if you could make it
19 effective, like, right away, give us time to
20 change it.

21 MR. PARKS: Okay.

22 MS. LAZENBY: Say, make it
23 effective July 1st, August 1st. Let us
24 change it in our forms and on the web site,

1 because that's --

2 MR. PARKS: And we can work that
3 in.

4 MS. LAZENBY: That's been our
5 biggest complaint.

6 MR. PARKS: In looking at this
7 last bunch, I've tried to be lenient. And,
8 you know, when somebody called me about the
9 Pennsylvania, they had just taken the test
10 somewhere, and that's when I sent Linda
11 Newman the e-mail and asked her, and I think
12 had Kathy make a part of the file that that
13 was the same test, I think. Or I meant to
14 anyway.

15 So I don't know that we need a
16 formal motion, or do we?

17 MR. HUNT: I think we do.

18 MR. PARKS: To clarify it?

19 Okay.

20 MR. HUNT: I would like it, just
21 for my own clarification.

22 MR. PARKS: Okay. Then that
23 motion, do you want to state it?

24 MR. HUNT: Yeah. I'll just state

1 that our reciprocity waiver will only apply
2 to an entity's home state's license, or some
3 wording.

4 MR. PARKS: Okay. And do you mind
5 adding or proof they've taken -- or PSI -- or
6 our testing service confirming they've taken
7 a substantially equal test in another state?

8 MR. HUNT: Does that need to fall
9 under the reciprocity?

10 MR. PARKS: Well, that's what it
11 is, really, I guess.

12 MR. HUNT: No, because in another
13 state, they may not have taken a --
14 reciprocity, they may not have taken a test.
15 They may have been grandfathered in.

16 MR. PARKS: Home-state
17 reciprocity, you're exactly right.

18 MR. HUNT: You know, accepting
19 another test is something we've always done
20 from time to time.

21 MR. PARKS: True. And that's sort
22 of what I came to realize.

23 MR. HUNT: But this reciprocity,
24 what my motion concerns is kind of the

1 automatic reciprocity.

2 MR. PARKS: Which I think is the
3 way it was intended to be seven or eight
4 years ago.

5 The meeting was in Nashville when
6 it was finally finalized at the what was then
7 the Crown Plaza.

8 MR. HUNT: Why don't we --

9 MR. PARKS: -- because I went to
10 it.

11 Okay. we have a motion by Cliff.
12 Is there a second?

13 MR. OWENS: Second it.

14 MR. PARKS: Is there a
15 discussion?

16 All in favor, say I.

17 (UNANIMOUS VOTE)

18 MR. PARKS: Opposed?

19 Thank you.

20 MS. LAZENBY: And do we need an
21 effective date to make it effective?

22 MR. HUNT: We'll make it August 1.
23 I'll add that to my motion.

24 MR. PARKS: Are you okay with that

1 Ernest, you being who seconded it?

2 MR. OWENS: Okay.

3 MR. PARKS: And may we have
4 another vote?

5 All in favor, say I.

6 (UNANIMOUS VOTE)

7 MR. PARKS: Thank you.

8 All right. The next one is Number
9 10, and it's this new legislation. And there
10 again, that was brought about by Georgia's --
11 I know the background on it -- Georgia's
12 failure to reciprocate.

13 This is a get-even bill, if ever
14 there was one, but it made it through the
15 House and the Governor has signed it.

16 It, basically, says that anybody
17 who contracts for more than \$2,500 from a
18 state that doesn't reciprocate with us has to
19 have a license. Isn't that right? Did I say
20 that right?

21 So it really -- it's going to
22 compound -- you know, confuse. And
23 enforcement is going to be the real butt of
24 it, quite honestly. And I've said that from

1 the first day I've heard about it. We don't
2 have the manpower or police force to enforce
3 it. Nonetheless, it's the law.

4 MR. NEAL: It also says that the
5 application be accompanied by evidence of the
6 applicant's current workers' compensation
7 insurance. And on our application if they
8 check none --

9 MR. PARKS: Yeah.

10 MR. NEAL: -- we don't have to
11 have it. But this says that they have to
12 have it.

13 MR. PARKS: Which -- and then by
14 December 31, 2009, nearly everybody in the
15 state has to in the construction industry.

16 MR. NEAL: Individuals, right.
17 Yeah.

18 MR. PARKS: And that's the new law
19 for another day to talk -- for another
20 discussion.

21 I don't think we need any action.
22 This is just here for our information.

23 MR. HUNT: Maybe, I don't
24 understand, but I'm not sure this does

1 anything different. I mean, currently, they
2 have to sign an affidavit that says they're
3 not doing work. And it's -- you know, where
4 they have to have a contractor's license.
5 They have to send in workmen's comp.

6 MR. PARKS: This is on the \$2,500
7 versus \$25,000.

8 MR. NEAL: In the case of a
9 limited license.

10 MR. HUNT: In the case of a
11 limited license.

12 MR. PARKS: Or in the case of an
13 LLE, then it's \$25,000.

14 MR. STILL: LLE is excluded for
15 some reason.

16 MR. PARKS: It must be the LLE
17 language.

18 MR. STILL: It may be. But anyone
19 doing work over \$2,500 that is coming in here
20 from a state that does not --

21 MR. PARKS: Reciprocate with us.

22 MR. STILL: -- reciprocate with us
23 has to be licensed?

24 MR. PARKS: If they do something

1 over \$2,500.

2 MR. STILL: Over \$2,500?

3 MR. PARKS: It really -- it
4 really -- when you think about it, every
5 state that touches Tennessee, except
6 Kentucky, now has a law. And we reciprocate
7 with every one of those, except Georgia.

8 So this is aimed at North
9 Georgians who come across the line into
10 Chattanooga.

11 MR. STILL: You got that bill
12 through.

13 MR. PARKS: I did not. I did not
14 support it. I did not try to kill it, but I
15 did not support it.

16 MR. STILL: Well, there's no
17 action. There's no action for this board to
18 take, is there?

19 MR. PARKS: I don't think there
20 is.

21 MS. LAZENBY: Well, I've just got
22 a question. Okay? How does this -- like a
23 contractor coming from California, does he
24 have to have a license if it's over --

1 MR. PARKS: If we don't
2 reciprocate with California, then, yes. If
3 we don't have a formal reciprocity with
4 California, then, yes.

5 MS. TARTER: It's that crazy.

6 MR. PARKS: It is. It's just
7 like a lot of our laws.

8 MR. NEAL: That's a good reason
9 and NASCAL to get everybody to reciprocate.

10 MS. LAZENBY: They're probably
11 going to throw us out.

12 MR. PARKS: They're trying. No,
13 they're trying -- I started to tell the tree
14 guys there's a national exam coming, but I
15 thought better of it.

16 MS. TARTER: Now, it does look
17 like there is some things you guys might have
18 to address, too, because it talks about,
19 well, written application on such forms as
20 prescribed by the Board. You guys might
21 already have something that can be easily
22 modified or not.

23 MR. PARKS: Our regular --

24 MS. TARTER: Basically, this

1 allows a basis for, maybe, not allowing them
2 to have a license, but it doesn't,
3 specifically, say that you have to refuse
4 them from having a license.

5 So I guess it's kind of in the
6 discretion area. It just say they have to
7 have an affidavit saying they didn't do it,
8 but it didn't say what happens if they do
9 give you an affidavit saying they did do it.
10 And application fee. I think those are the
11 only things that looks like things that --

12 MR. PARKS: I mean, to me, it's
13 our board application that they have to fill
14 out. Now, maybe, I'm just assuming too
15 much. It just changes the threshold for that
16 certain group of people.

17 MS. TARTER: Right. So if you
18 check box here of what state you're from,
19 then fill out X application.

20 MR. PARKS: If you're from
21 Georgia.

22 MS. TARTER: Let's call it what it
23 is.

24 MR. PARKS: Let's call it what it

1 is, in this day. And I -- you know, it also
2 would apply, maybe, if you're from Iowa. I
3 don't know that they even have a law. Or
4 Pennsylvania, do they have a law. Not many
5 Northeastern states have contracting laws.

6 MR. HUNT: New Jersey doesn't.

7 MR. PARKS: Yeah. But we -- okay.
8 We can work on the procedures.

9 The next item behind Tab 11 deals
10 with something this Board has probably talked
11 about more than any other one topic as long
12 as I've had anything to do it with. And
13 that's the six month's-penalty provision for
14 unlicensed activity. That's at 62.6120(a)2.

15 Beth and I have both had some
16 conversations with, at least, one attorney
17 saying you're inconsistent. And then they
18 quote certain board meeting minutes that
19 proves, yes, we are inconsistent.

20 Some of us will remember a time
21 when we had an attorney who told us it had to
22 be six months from the day the Board meets
23 and acts. I don't remember what attorney
24 that was.

1 And whenever that attorney went
2 away, we went back to applying some level of
3 common sense in having interviewed somebody
4 who had broken the law, trying to understand
5 the facts, and where it was, you know, in our
6 opinion, I guess, a truly honest oversight
7 versus flagrantly trying to come in here and
8 just circumvent the law.

9 You know, we looked for an earlier
10 date so we didn't penalize them as much.

11 So I have not read what this is.
12 Is this the law itself? It is. I guess, it
13 is. Okay. This is the law.

14 MS. TARTER: Right.

15 MR. PARKS: So if we can, we've
16 been asked to come up with a policy statement
17 or a position on how we interpret or
18 determine what starts the six months. You
19 know, what is a determination by the Board?

20 And I'm opened to any and all
21 suggestions.

22 MR. STILL. I just fall back on
23 what we've done in the past, and we used
24 discretion. And I think we've got -- I think

1 we have that right to do so, by the codes
2 even. Because of just what you said, the
3 statement you just said.

4 MR. NEAL: I know. I agree.

5 MR. STILL: Sometimes the
6 circumstances dictate it to be a more severe
7 penalty than others.

8 MR. NEAL. An example would be, if
9 you have an applicant come in here for an
10 interview, and he sits down. And for the
11 first time, you find out that day, that he
12 admits that he built a commercial building.

13 I mean, he didn't know anything
14 about it until that day, so six months from
15 that day.

16 But the same guy comes in here,
17 and he's been issued a citation months ago
18 for doing that, then his six months ought to
19 start when we found out about it. I mean,
20 it's really simple to me.

21 MR. NEAL: So really you're
22 penalizing the guy that got caught less than
23 you are the one that admitted it, in that
24 circumstance.

1 MR. PARKS: It can be. It's
2 really hard to put into words all the
3 possibilities, or all the --

4 MS. TARTER: And that's why --

5 MR. PARKS: -- situations that can
6 happen.

7 MS. TARTER: I mean, in that
8 circumstance, that's why it's kind fun, but
9 it's -- not fun, but I think appropriate that
10 it's in y'all's discretion. Because you're
11 looking at all the situations.

12 If there was -- I would say if
13 there was a certain clock or time -- I spoke
14 with this attorney about this, and I said my
15 concern about having a certain time that it's
16 going to start ticking is that they're going
17 to start working around that and, you know,
18 finish up the projects.

19 And then you know that they're not
20 going to sit down for an interview or know
21 that their license is going to be up until
22 the next date. And so it's then, and the
23 project has already done. I mean, just abuse
24 of knowing when that clock's going to start

1 running, as opposed to being encouraged to
2 notify us as soon as possible or fess up to
3 it.

4 MR. HUNT: The best thing we can
5 do is to change the law to say up to six
6 months or up to twelve months. And then
7 that's when our discretion -- we can use our
8 discretion to hold somebody's one month or
9 five months or twelve months from the date of
10 the meeting, or not at all.

11 MS. TARTER: Because there isn't
12 any.

13 MR. HUNT: There's no discretion
14 now. You've got to have six months. The
15 discussion is when we --

16 MR. STILL: When you start it.

17 MR. HUNT: -- start the six
18 months.

19 But if we had the discretion, you
20 know, up to twelve months, let's say, it
21 would make it a lot easier. I mean, we could
22 do our job better.

23 MR. PARKS: I would totally
24 support that for another one of our wish-list

1 items, and then like the idea of, you know,
2 up to twelve months.

3 MR. NEAL: And you could give them
4 one, or you could give them twelve.

5 MR. PARKS: Yeah. And it -- you
6 know, when I think back over my time with
7 the -- I can remember some that deserved, you
8 know, every bit of twelve months. And then
9 some that were truly, I think -- I hate to
10 say ignorant of the law, but it was a very
11 honest mistake, and we weren't penalizing
12 anybody but that contractor.

13 The work didn't -- we may have
14 hurt somebody's tax base by the work not even
15 happening or happening later rather than
16 sooner. Or they'd just go out and form a new
17 company name and circumvent the law.

18 So there's ways to get around that
19 six months if you've got the legal
20 wherewithal.

21 So we'll take no action, other
22 than add it to our wish list of changing the
23 language.

24 MR. NEAL: And continue to use

1 discretion.

2 MR. PARKS: Thank you.

3 All right. The next item deals
4 with a project in Nashville. We have some
5 information on it. We were e-mailed some
6 information on it. I'm going to try to
7 introduce it, and then, I'm going to let Beth
8 do a little talking.

9 We have always understood that
10 work on federal land is not -- we can't
11 enforce the licensing law on federal projects
12 on federal land. Nor do we have any
13 authority over DOT projects.

14 This particular project is a
15 Nashville Davidson County Metro project that
16 has some federal money. I don't think it's
17 100-percent federal. That's not what's
18 written here, but that's what I've been
19 told. And the DOT, Tennessee DOT has some
20 administration of it.

21 The issue is whether or not the
22 contractor that does it has to be licensed.
23 And as I understand, what all we've got in
24 the federal ruling in Alabama over some case

1 is where our law says it is against the law
2 to submit a bid without a license.

3 The issue here is that someone,
4 because of this ruling in Alabama, can submit
5 a bid without a license, but prior to Metro
6 awarding them the job, they'd have to get
7 a license. They'd have to be approved for a
8 license. And we couldn't penalize that
9 person for having bid that project.

10 And you can rest assured it would
11 be a hardship application, because once
12 they've solicited bids, you know, they're
13 going to want to go, I'm sure, if it's within
14 the budget.

15 Now, what have I left out?

16 Or what do you know, Frank?

17 MS. TARTER: You know more --

18 MR. PARKS: You've had calls about
19 it. I've had calls about it. Beth's had
20 calls about it.

21 That last piece about the bidding
22 process is what I was unclear on until
23 today. So I don't know.

24 You know, Metro needs an opinion

1 from us, and our opinion is that our law
2 applies, I think. I don't think any of us
3 will disagree that a licensed contractor
4 should do that work, by law is required to do
5 that work.

6 MS. TARTER: And the way that the
7 question was formed to me, just so you guys
8 know how in the dark I am, it was purely -- I
9 didn't -- I have no idea what the project is
10 for.

11 I don't know the specifics, other
12 than they gave me this federal law, and they
13 said, you know, basically, we have this
14 project. We believe it applies to this
15 federal law. I mean, we've always been
16 operating under the assumption that this
17 federal law preempts the state law.

18 And so I pulled the federal law.
19 I pulled the state law, and then I
20 crosschecked any case law on it.

21 But it's not necessarily -- and
22 that's what this federal law says, and I
23 don't know if you guys got copies of this or
24 not, but it says: It's not precluding

1 requirements of a state which require
2 licensure of a contractor upon or subsequent
3 to the award of the contract.

4 It's just a bidding issue. And
5 it's, like, an issue with a competitive --
6 you know, they're trying to be, like, fair
7 competition or something. And that's
8 actually federal law.

9 Which if a federal law says
10 something and a state law conflicts, federal
11 law is going to win.

12 MR. NEAL: And even the Department
13 of Transportation, TDOT, subscribes to that
14 philosophy.

15 If they're federal funds -- and,
16 Cliff, you know, you can correct me if I'm
17 saying anything that's wrong. But if there
18 are federal funds in a project, there is not
19 a requirement of licensing in order to bid
20 the job.

21 But in order to be awarded the
22 job, they have to have a contractor's
23 license.

24 Now, in the case of this job, as I

1 understand it, Metro was of the impression
2 that the evidence of contractor's licensure
3 was to be placed on the outside of the bid
4 envelope.

5 Apparently, somebody questioned
6 that about this federal law, and then, they,
7 in turn, asked for an interpretation.

8 Number one, in checking with TDOT,
9 it's not totally funded by TDOT.

10 Number two, it's not on federal
11 land. It's on West End Avenue, and it's a
12 quite complicated electrical project that
13 involves signalization of all the traffic
14 lights on West End Avenue.

15 That said, again, it was my
16 understanding that Metro is not wanting to
17 delay, which it's already been delayed
18 significantly, the letting of this protect,
19 and to have any further delay, if they had a
20 situation come where somebody bid the job
21 that was not licensed and then all of a
22 sudden they were low and they had to go get a
23 license, if they could, in order to get
24 qualified to do the job.

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1 So, you know, it's kind of like
2 Larry said, I think most everybody here is of
3 the opinion that if it's not on federal land,
4 and if it's not -- well, I don't know. Even
5 if it was totally federally funded, if it was
6 another entity, i.e., Metropolitan Public
7 Works letting the contract, and actually had
8 control over it by virtue of the specs, then,
9 maybe, even if it was all federally funded, I
10 don't know that it would be there. And it's
11 for sure not on federal property. So I don't
12 know how the law would apply, other than our
13 contractor's law.

14 And we've had several instances
15 where Metro has, in the past, violated our
16 licensing law procedures and had pretty
17 strong letters written by our staff attorneys
18 to them to not continue to ignore the
19 licensing law.

20 The example I'll give you is the
21 Metropolitan Airport Authority. And sometime
22 back, they took bids on a \$45 million job,
23 which definitely had fed funds in it, and
24 they definitely required that the bid

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1 envelope be in accordance with our law.

2 So most everybody is accepting of
3 that and going along with it and is really
4 trying to comply with what the Board's
5 interpretation of what that law has been for
6 some time.

7 MS. TARTER: And if it wouldn't
8 meet this federal law under the kind of
9 requirements that you guys are talking, then
10 they would be in violation of federal law.

11 So I guess the way I look at it
12 is, if they're misrepresenting to me -- I
13 mean, the way that I was going to sculpt an
14 opinion is, basically, these are the kind of
15 requirements under this fed law to meet this
16 requirement, which is going to preempt our
17 state requirement. Otherwise, it's going to
18 default back on to our state law.

19 So there's only certain situations
20 that they're going to be able to meet this
21 law. They're telling me that they meet it.
22 And, as such, I'm just going to be like,
23 look, if it's under these kind of
24 requirements that this federal law applies,

1 then, yes, we'll agree that this is
2 preempted, only for the purposes of, like,
3 listing a license on the bid.

4 But it does also say, and it's
5 clear in this, too, that it doesn't preclude
6 us from requiring the license on the award.

7 MR. NEAL: Am I hearing you say
8 that Metro is saying that they feel like that
9 this falls under the federal law?

10 MS. TARTER: Their questions to
11 me -- because I haven't looked at any
12 specifics on who's funding this protect or
13 anything. They just said this is -- they're
14 representing to me that they fall under this
15 exception. And, as such, this preempts state
16 law.

17 It's a very legal -- I haven't
18 gotten into the details of it at all. It's
19 just strictly a very legal federal preemption
20 question was all I got. So I don't know the
21 details.

22 But if they're misrepresenting
23 anything, then that's -- then they're
24 shooting themselves in the foot. Because I'm

1 not telling them that they can go ahead and
2 disregard all law. I'm saying, yes, I'd
3 agree that this would preempt our state law
4 if it meets these requirements.

5 MR. HUNT: See, I wouldn't do
6 that. What I would rather -- well, let me
7 back up.

8 TDOT, in essence, then violates
9 federal law all the time. Because, you know,
10 they don't fall under our jurisdiction, but
11 they have a prequalification process. And,
12 in essence, our license is nothing but a
13 prequalification process.

14 So I don't think we're out of line
15 by sticking to the way we've interpreted it
16 in the past.

17 MS. TARTER: Well, this --

18 MR. HUNT: I would rather see you
19 craft a letter that says, historically, the
20 Board has enforced it this way, and
21 that's still the way we feel.

22 MS. TARTER: But --

23 MR. HUNT: Rather than getting
24 into interpreting federal law and giving them

1 an out. I mean, all you have to do is state
2 what the Board's position is. Which I think
3 is consistent with how we've done it for 16
4 years that I'm aware.

5 MR. PARKS: Yeah. And could she
6 add to that: And should the low bidder be
7 unlicensed, we will not penalize them for
8 bidding without a license? And I mean to me
9 that's sort of the only gray area.

10 MR. HUNT: Well, that's
11 inconsistent with what we --

12 MR. PARKS: That's inconsistent
13 with our law, but if -- that's preempted.

14 MS. TARTER: It's preempted by the
15 federal law.

16 MR. PARKS: That is preempted by
17 federal. That federal statute she's
18 referring to says you can't impose a
19 licensure requirement on a bidder.

20 MS. TARTER: For an STD, which is
21 a state department of transportation project.

22 MR. NEAL: But it's not.

23 MS. TARTER: Well, that's the
24 thing. Then they're misrepresenting it to

1 me.

2 MR. PARKS: Oh, okay.

3 MR. NEAL: Well, I mean, how could
4 they do that? They're the Metropolitan
5 Public Works. They have no jurisdiction with
6 the state at all.

7 MS. TARTER: If they're
8 misrepresenting it, if it doesn't meet these
9 requirements under this federal law for this
10 federal law to apply, then it would be a
11 violation of state law, because they can't
12 hide under the federal law.

13 They're representing to me: We
14 meet this federal law. To our reading, this
15 federal law preempts your state law on that
16 one portion about requiring a license before
17 you bid.

18 And it's true federal law does
19 preempt our state law as far as requiring a
20 license for a bid.

21 But it says in here it doesn't
22 preclude requirements upon awarding of a bid
23 for having a license.

24 MR. HUNT: At what point does it

1 preempt our state law? How much money and
2 how much percent of federal money has to be
3 involved before it preempts our state law?

4 MS. TARTER: It doesn't say that.
5 It just says STD purposes for these kind
6 of -- I mean, the thing is, I haven't gotten
7 into the minutia of who's funding this
8 project or anything like that.

9 The only question that they've
10 asked me is, this the law that we feel like
11 we -- and then that's their -- I don't have
12 any documents in front of me, as far as their
13 questions go.

14 That's their -- the onus is on
15 them if they're misrepresenting to me that
16 the funds are being -- the funds and
17 everything would fall under this category.

18 And that's the exact circumstances
19 that I would only say that it would be
20 preempting it.

21 MR. HUNT: Do we not have a
22 Tennessee Attorney General's opinion that
23 says that we're okay with how we've
24 practiced?

1 MR. NEAL: And everybody, to my
2 knowledge, is doing it. Another example is,
3 three or four months ago, the City of
4 Franklin had a job where the Department of
5 Transportation actually provided the plans,
6 the design of the project.

7 They also provided a portion of
8 the funds for the construction of the road.

9 But the City of Franklin let the
10 contracts, and on the bid envelope, just as
11 plain as day, all our requirements were
12 there.

13 MS. TARTER: Okay. I don't -- I
14 mean, I don't know how other people are doing
15 it. I just know that this law says this, and
16 it preempts our law, and for that very small
17 exception.

18 MR. NEAL: Well, I think it's to
19 the point that Cliff's making. I mean, we've
20 got everybody in the country now trying to do
21 right by our law, and the only exception
22 being TDOT federal land. Period.

23 MS. TARTER: Right. And the
24 circumstances of this law, which, I mean,

1 that's what I'm saying. I'm not letting them
2 do anything that they aren't already entitled
3 to do under this federal law.

4 Now, if they're misrepresenting to
5 me the nature of who's funding this or
6 anything like that -- I don't know the
7 details of it. All they've requested of me
8 was: Here's the law that we think we've bid
9 under.

10 MR. NEAL: Well, what does the
11 federal law say?

12 MS. TARTER: I don't have it in
13 front of me. I don't know if you guys got
14 it. I think I've e-mailed it to Larry.

15 MR. HUNT: What I'm asking is, is
16 for you to write a letter from the Board
17 representing the Board's opinions, not get
18 into interpreting federal statute, just
19 strictly focus on what the Board's opinion
20 is.

21 Is there anything out of line with
22 doing that?

23 If they want to have an out, they
24 need to work for it. They need to make their

1 own case. Let's don't make their case for
2 them.

3 MS. TARTER: Well, I mean, my only
4 concern is, is that the fact that this
5 federal law, if it meets these guidelines,
6 fits this exception, we don't have any
7 enforcement ability.

8 MR. HUNT: Then let me prove that.
9 Let's don't make the case for them. You've
10 said you don't -- you haven't read that. And
11 you don't know the makeup of the funds and so
12 forth.

13 MS. TARTER: No, I haven't. I
14 mean, I'm familiar with a law, but I haven't
15 read they specs on it. I don't know this
16 project. I was just strictly asked a legal
17 question about federal preemption.

18 MR. NEAL: Well, we're
19 contradicting our own attorney general's
20 interpretation of the law.

21 MS. TARTER: I didn't find an
22 attorney general's opinion on this scenario.

23 I did find an attorney general's
24 opinion on federal funding, which is similar

1 to this federal law preempting it, because
2 it's federal land. And that's a very similar
3 issue.

4 The attorney general opinion I
5 have was one from Alabama that's specifically
6 about a city project. They had federal funds
7 involved. They didn't require a license
8 listed on the bid, but they did require a
9 licensed contractor at the time that it was
10 awarded. And it stated that, yes, it's
11 preempted by this federal law.

12 So, I mean, it's --

13 MR. PARKS: Is Metro soliciting --
14 to your knowledge, is Metro soliciting the
15 bid or is TDOT?

16 MR. NEAL: Metro.

17 MS. TARTER: I don't know. So you
18 guys sound like you know.

19 MR. PARKS: So if what we have in
20 the last three pages in our book is the
21 actual federal law, and it looks like it is,
22 then it begins with the procedures and
23 requirements, and STD, as State
24 Transportation Department, proposes, then I

1 say that doesn't apply, because we're talking
2 about Davidson County Government. If they
3 are, you know, soliciting the bid.

4 You know, now, that's one line out
5 of that. If that is the law, then I'm taking
6 one line out of it and interpreting it, or
7 offering an opinion on it.

8 Then, you know, I say, then, Metro
9 keeps doing what they've been doing,
10 reference TCA 626.101 et seq., or whatever
11 it's called. You know, they have to abide by
12 our law.

13 MS. TARTER: Right.

14 MR. PARKS: And by that, they can
15 even restrict the bids to people who are
16 properly licensed at the time of bid.

17 MS. TARTER: And by that
18 description -- I mean, if it sounds like the
19 exact nature of a situation doesn't meet
20 these requirements.

21 MR. PARKS: I agree. I think -- I
22 agree, and I think we all agree with that,
23 don't we?

24 MR. HUNT: I agree with it. I'm

1 just, I don't think we need to make somebody
2 else's case.

3 MR. PARKS: Okay.

4 MR. HUNT: To me, we need the
5 staff attorney to write a letter from the
6 Board stating our position.

7 MR. PARKS: And that is?

8 MR. HUNT: And that is that over
9 the years we've felt that we govern all
10 contracting in the state, except TDOT work
11 and jobs on federal land or reservations.

12 And then that if there's something
13 to the contrary, then, you know, we ask
14 forgiveness, in essence, but that's been our
15 position for many decades.

16 You know, then, they can make
17 their own case. Well, this is 100 percent --
18 we'll let them make their own case.

19 MR. PARKS: And I wouldn't put it
20 in the letter, but I would add to that -- or
21 if you talk to somebody. And if there's
22 somebody from out of state that wants to bid
23 it, then let them get a -- and Metro will, at
24 least, write the hardship letter, we'll get

1 them approved.

2 MR. HUNT: Right.

3 MR. PARKS: If they have all the
4 paperwork and, you know, comply with our
5 requirements for licensure. We won't make
6 them wait until July the 20-whatever. That's
7 a valid hardship. That's a valid hardship.
8 If they have a -- if they specialize -- I
9 mean, if they possess an expertise in what
10 they're soliciting bids for.

11 MR. NEAL: Is that a motion?

12 MR. HUNT: Yeah, mine's in the
13 form of a motion, what I just stated about --

14 MR. NEAL: Second it.

15 MR. HUNT: -- crafting an
16 opinion letter expressing the Board's
17 position.

18 MR. PARKS: Any other discussion?
19 We have a motion and a second.

20 MR. STILL: And if that letter,
21 not to offend anyone, particularly staff,
22 could be reviewed by somebody on the Board
23 before it goes out to make sure that is says
24 what you intend in your motion.

1 Is that reasonable to amend it to
2 that?

3 MR. NEAL: I will read it or
4 either the chairman will read it.

5 MR. STILL: Okay.

6 MS. TARTER: I will have you guys
7 read it.

8 MR. PARKS: Okay. That's fine.

9 MR. STILL: That's why I said I'm
10 not implying --

11 MS. TARTER: That's okay. I
12 realize I'm not a member of the profession,
13 and I get confused when I get bogged down.

14 MR. PARKS: You understand it
15 pretty good.

16 MR. HUNT: Yeah. Not to belabor
17 the point, but, you know, this language
18 that's in our book here was referring to
19 federal aid highway contracts. Well,
20 typically, that means 100-percent federal
21 dollars.

22 MS. TARTER: Right.

23 MR. HUNT: Which, you know, we
24 don't know enough about this particular

1 project anyway.

2 MS. TARTER: Basically, the way
3 this came about is that they started asking
4 me about any, you know, amount of federal
5 funding, blah-blah-blah-blah-blah.

6 And I didn't feel comfortable, you
7 know. Basically, I said, make your case.
8 Give me some sort of law that you're saying
9 that says it's preempted.

10 This is the law that they gave me.
11 Now, I'll agree that if they meet the
12 conditions of this law, then it would
13 preempt. And it sounds like you guys agree,
14 but you're concerned about the specific
15 nature of this project.

16 And that's what I was going to,
17 maybe, reflect in the letter saying, you
18 know, we might agree that we can't help it if
19 federal law might preempt it on these certain
20 circumstances, but we don't know that your
21 project meets these certain circumstances.

22 I mean, if you feel comfortable,
23 since you guys have been getting calls from
24 other people. I don't know any specifics

about the project. I haven't been submitted anything, any kind of specifics about the project. I was strictly a line of questions from Metro.

MR. NEAL: I'm just like Cliff. I don't think we ought to make their case.

MR. HUNT: Yeah. Let them make their case. And, certainly, if we took action anyway, and federal law trumps, it would negate whatever we do, whatever action we took. Right.

MR. PARKS: Is there other discussion on the motion?

All in favor, say I.

(UNANIMOUS VOTE)

Thank you. That's the end of the agenda. Does anyone have anything else or any unfinished business?

MR. HUNT: I move we adjourn.

MR. PARKS: Thank you.

MR. STILL: Second.

MR. PARKS: All in favor?

(UNANIMOUS VOTE)

(END OF MEETING)

C E R T I F I C A T E

STATE OF TENNESSEE:
COUNTY OF SHELBY:

I, DEBI ROGERS, Registered Professional Reporter, Certified Shorthand Reporter, and Notary Public, Shelby County, Tennessee, CERTIFY:

The foregoing proceedings were taken before me at the time and place stated in the foregoing styled cause with the appearances as noted.

Being a Court Reporter, I then reported the proceedings in Stenotype, and the foregoing pages contain a true and correct transcript of my said Stenotype notes then and there taken.

I am not in the employ of and am not related to any of the parties or their counsel, and I have no interest in the matter involved.

I further certify that in order for this document to be considered a true and correct copy, it must bear my signature and seal, and that any reproduction in whole or in part of this document is not authorized and not to be considered authentic. Any unauthorized reproduction and/or transfer of this transcript will be in violation of Tennessee Code Annotated 39-14-149, Theft of Services.

Witness my signature this the
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--	'	(111:24) (115:11) (115:13) (115:18)
-- (54:10) (110:12)	'91 (56:20)	AGREED (8:7)
[9	AGREEMENT (13:18) (14:12)
[MULTIPLE (67:1)	951 (19:8)	AHEAD (52:8) (103:1)
[UNKNOWN] (25:4) (25:6) (25:9)	99-PERCENT (60:24)	AID (114:19)
(25:14) (35:3)	A	AIMED (86:8)
0	ABIDE (111:11)	AIR (62:1)
000 (8:23) (20:22) (21:2) (21:4)	ABILITY (109:7)	AIRPORT (100:21)
(22:2) (29:7) (29:8) (85:7) (85:13)	ABLE (57:17) (101:20)	ALABAMA (73:21) (95:24) (96:4)
,	ABOVE (8:11) (53:6)	(110:5)
'06 (48:4)	ABUSE (92:23)	ALAN (38:4) (44:21)
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